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Supreme Court of the United States

October Term, 1943

No. 229

Julia C. Collins and Hattie L. Mosher,

Petitioners,

vs.

Joe O'Connell and Jessie B. O'Connell,
Husband and wife,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CASES CITED

None

OPINIONS DELIVERED

Trial Court wrote no opinion. The opinion of the Circuit Court of Appeals is officially reported in, 136 Fed. (2nd) 141 (Adv.) and is printed in the Transcript of Record, pages 274-280.

JURISDICTION OF SUPREME COURT

It is admitted that this court has jurisdiction of this case on certiorari. It is submitted, however that no ground for review is presented under Subdivision 5 of Rule 38 of this court.

STATEMENT OF THE CASE

Respondents filed suit to quiet title to a city lot in Phoenix, Arizona, against petitioners. The suit was removed to the United States District Court by petitioner, Julia C. Collins, upon grounds of diversity of citizenship and separable controversy.

The issue presented was the validity of an assignment of mortgage, made by petitioner, Hattie L. Mosher, under Power of Attorney from her daughter, the mother of petitioner Julia C. Collins said mortgage being a lien upon property then owned by petitioner Hattie L. Mosher. After the assignment was made, and before it was recorded, Julia Mosher Collins died. The trial court found the assignment was delivered in the lifetime of Julia Mosher Collins, and was valid, and entered judgment quieting title in favor of the plaintiffs in the suit,—respondents here.

Practically the only point urged for reversal in the Circuit Court of Appeals, and here is that the assignment of mortgage was void, upon the theory that petitioner, Hattie L. Mosher, donee in the Power, owned the property covered by the mortgage which was assigned by her under the Power.

The Circuit Court of Appeals rejected the contention, basing its decision upon the law of Arizona as expressed in the decisions of the Arizona Supreme Court, and affirmed the decision of the trial court.

ARGUMENT

Petitioner suggests, as a ground for certiorari, conflict with the decision of the Arizona Supreme Court in the case of *P. W. Litchfield, Appellant, v. H. H. Green, Appellee,* 43 Ariz. 509; 33 Pac. (2d) 290.

The two cases deal with wholly different subjects, and there is no conflict whatever between them.

The Circuit Court of Appeals recognized that under the rules of this court it was required to follow the decisions of the Arizona Supreme Court, and did so with unusual fidelity.

See, Opinion, Transcript 277-280.

The petitioners also suggest conflict between the decision in this case and the decision of the Sixth Circuit in the case of *State Bank of Hardinsburg, v. Brown,* 317 U. S. U. S. 135. This case presents only questions of local law, so there can be no conflict with a federal decision in another state.

It is respectfully submitted that the Petition for Writ of Certiorari is wholly without merit and must be denied.

Respectfully submitted,

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